

**LEGAL PROTECTIONS FOR DONATION-BASED
CROWDFUNDING SERVICE PROVIDERS IN INDONESIA**

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Citation Guide:

Putra Halomoan Hasibuan,
'LEGAL PROTECTIONS
FOR DONATION-BASED
CROWDFUNDING
SERVICE PROVIDERS
IN INDONESIA' [2020] 2
(2) Prophetic Law Review 1.

Received:

20 January 2020

Accepted:

17 November 2020

Published:

21 December 2020

DOI:

10.20885/PLR.vol2.iss2.art1

Abstract

This study focuses on legal protections for donation-based crowdfunding service providers in Indonesia. It is urgent to investigate these protections because the specific legal arrangement is not clear. This research discusses the following issues: First, what is the meaning of a legal protections in the practice of donation-based crowdfunding in Indonesia? Second, what are the current legal protections, if any, for donation-based crowdfunding service providers in Indonesia? This study carried out a qualitative normative legal research method by using a statutory approach and a conceptual approach. The object of this research is focused on those entities which have implemented donation-based crowdfunding. The results showed that: First, the community in Indonesia has not had a good understanding of the term 'donation-based crowdfunding,' still requiring socialization regarding the ways and methods of implementing it online even though it has been done for a long time; and Second, the legal protections for donation-based crowdfunding service providers still adopt the regulations similar to DBC. This study recommends that the government immediately conduct socialization to the public regarding the existence of DBC in Indonesia. Furthermore, laws and regulations specifically discussing donation-based crowdfunding should be issued immediately in order to address many problems that have arisen and will continue to arise as a result of these activities, especially in the field of donations.

Keywords: *Capital, crowdfunding, donation, investment, legal protections, parties.*

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A. Introduction

Crowdfunding² is the practice of funding a project or business by collecting small amounts of money from a large number of people, and generally carried out on social networks.³ The term ‘crowdfunding’ was first codified in the Regulation of Financial Services Authority Number 37. of 2018, concerning crowdfunding services through information technology-based stock offerings (Equity crowdfunding, hereinafter referred to as “crowdfunding services”).⁴

The term ‘crowdfunding’ can literally be defined as a form of funding which involves a large number of people. However, the term ‘crowdfunding’ referred to in this paper is a form of funding which uses internet-based social media. Referring to the definition proposed by Michael Sullivan that crowdfunding is a collaboration of several people, who together collect funds in order to achieve a particular goal; a funding mechanism based on reciprocity, transparency, and shared interests. The capital comes from the public and usually makes use of the internet.⁵

Crowdfunding has developed symbiotically with internet technology. These activities utilize websites to improve accessibility of internet users, including informing them of anything related to the investment activities. Regarding the fact that this funding mechanism has gained success, the government strongly supports the crowdfunding activities as one of the ways to boost the country's economy.⁶

The implementation of crowdfunding is normatively in line with the spirit of economic development as stated in Article 33 of the 1945 State Constitution of the Republic of Indonesia. One important thing to pay attention to is its implementation. Crowdfunding has successfully married the concept of mutual cooperation with the use of technological advances. Both the good and the bad aspects of this form of mutual cooperation are consequences of the direction of development which has led to social change. As has been known, mutual cooperation as a form of integration is significantly

²The term ‘crowdfunding’ is an English word, which means funding by a group of people commonly carried out through social media, affirmed in Financial services authority regulations Number 37 of 2018 concerning the presence of the term and the use of the term.

³<http://Crowdfundingin Indonesia>. Accessed on September 17, 2019.

⁴General Provisions, Article 1 Financial services authority regulations Number 37 of 2018.

⁵ Nia UtamiTirdananta, Vina Georgian, Yen Sun, *Evaluasi Good Corporate Governance Atas Kebutuhan Donatur Pada Penerapan Crowdfunding Di Indonesia: Studi Kuantitatif Dan Kualitatif Pada Efekrumah kaca.Net, Patungan.Net, Dan Wujudkan.Com*.ComTech Journal, Vol 5 of 2014, Bina Nusantara University Jl. K.H. Syahdan No 9, Kemanggisan, Palmerah, West Jakarta 11480, p. 124.

⁶ Arief Yuswanto Nugroho & Fatichatur Rachmaniyah, *Fenomena Perkembangan Crowdfunding di Indonesia*, *Jurnal Ekonomi Universitas Kediri*, Vol 4. No.1 2019, p. 42.

affected by the sense of togetherness among community members, carried out voluntarily without any financial benefits in the form of salary or other forms of payment.⁷ This, in fact, has made it possible for people to meet others whom they have never met face to face to contribute to a common goal.

Crowdfunding is one of the fintech products which provides problem solving for social and economic difficulties in developing a business. This new activity is specifically not officially from the government. However, it has been done on many sites using the title of crowdfunding.

In terms of the classification, crowdfunding is divided into four types:

1. Donation-Based Crowdfunding, is a crowdfunding *in* which the funders do not receive any compensation. This type of crowdfunding is usually carried out for non-profit and social projects such as building sanitation facilities, providing scholarships, and others. For example: *Kitabisa.com* and *GoFundMe.com*.
2. Reward-Based Crowdfunding, i.e. a crowdfunding scheme in which the funders will receive a return in the form of either goods, services, or a right, but they will not receive profit sharing from the results of the project, instead they will receive reward in the form of goods. This type of crowdfunding is usually intended for projects in the creative industry such as games, where the funders of the project will be given interesting features from the games. For examples: *Kickstarter.com* and *Indiegogo.com*
3. Debt-Based Crowdfunding, i.e. a crowdfunding which is the same as loan in general, i.e. debt financing. Borrowers submit their proposals and prospective funders or creditors will invest some amount of money which is agreed upon as debt, for which they will receive interest. For example: *crowdfund.co*.
4. Equity-based Crowdfunding, i.e., a crowdfunding tool with a concept similar to equity financing, where the money invested will become equity or a part of company owned by funders for which funders will receive dividends. For example: *Akseleran*.⁸

Crowdfunding focuses on fundraising in the form of small donations from funders.⁹ Crowdfunding is carried out over a limited period, from several days to several weeks, intended to achieve funding targets before the deadline.¹⁰ In fact, crowdfunding has long been practiced in western countries, but it started by using a traditional method, i.e. submitting fundraising proposals manually to many people. For examples, the project of

⁷Maulana Irfan, Crowdfunding Sebagai Energi Pemaknaan Gotong Royong Yang Terbarukan, *Jurnal Social Work*, Vol 6. No.1, 2018, p. 31.

⁸Dony Syamsyah, Fadillah Akbar, 'Konsep *Crowdfunding* untuk Pendanaan Infrastruktur di Indonesia' (2016), BKFKKRI, 1.

⁹Fathimah Muthi Luthfiyah, Membangun Website Manajemen Investasi Berbasis *Crowdfunding* Modul Monitoring Dana Investasi Menggunakan Metode Iterative Incremental, (2016) RSI 24.

¹⁰Abdul Rachman Pambudi, Analisis Pengembangan Situs *Crowdfunding* Sebagai Media Penghubung Alumni Dan Civitas Akademika Di Lingkungan Jurusan Pendidikan Teknik Elektronika Universitas Negeri Yogyakarta (UNY), (2018) TE 8.

writing a poetry book by Alexander Pope in 1713 and the project of building the Statue of Liberty in the United States of America, which was carried out by the local community in 1980s, until eventually crowdfunding practices came to be carried out in the modern era using the internet.¹¹ In fact, crowdfunding innovation using website has allowed the idea to become much more popular due to transparency.¹²

In Indonesia, crowdfunding first started in 2011, which then received support from the government as an activity to boost the country's economy, through supervision from the Financial Services Authority (OJK) which is responsible for the supervision of financial technology issues as stipulated in Article 7 of Law Number 77 of 2016 concerning Information Technology-Based Money Lending and Borrowing Services, stating that "Providers are obliged to apply for registration and licensing to OJK." In addition, Article 6 of Law Number 21 of 2011 concerning OJK states that OJK shall regulate and supervise financing activities and other financial services institutions.¹³

In practice, crowdfunding involves three main parties. First, those who are referred to as initiators/creators, either individuals or groups, who have the projects or ideas that require funding. Second, those who support the idea, or are interested in the products that will be produced from the project, who then invest funding to the first party. Third, between the two parties, organizations or also referred to as platforms that carry out an intermediary function that allows for the relationship between the first two parties to take place on the basis of trust.¹⁴

In the abovementioned types of crowdfunding, donation-based crowdfunding is a fundraising activity that is popular in Indonesia because Donation-Based Crowdfunding (here in after DBC) is a social activity which is easy to understand and aims to seek donations and non-profit funders. This type of crowdfunding is commonly referred to as micro-patronage.¹⁵ Funders contribute to funding social projects without having any expectations of receiving returns on their contribution. In addition, DBC asks for a very small contribution from its funders to donate voluntarily. Therefore, because funders only

¹¹ Henner., J., A Snapshot On Crowdfunding. *Fraunhofer Institute for Systems and Innovation Research*, 2014, h. 2.

¹² Putri Sekar, Crowdfunding dari masa kemasa, <https://marketing.co.id> accessed on September 10, 2020.

¹³ Article 6 Law Number 21 of 2011 concerning *Financial Services Authority*.

¹⁴ Dhoni Alexander, 'Mencari Pendanaan *Crowdfunding* Bagaimana caranya' (*Afrist.com 11 Juni 2019*)<<http://avrist.com/lifeguide/mencari-pendanaan-crowdfunding>> accessed on March 20, 2020.

¹⁵ Scott Marril, Crowdfunding, Micro-patronage, and the Future Of Free Software, <https://techcrunch.com> accessed on September 14, 2020.

give small amounts of money, they usually do not expect returns and an accountability report for their donations. In other words, it is voluntary donation made to social institutions without an accountability report.¹⁶

Unfortunately, along with an increasing number of funders and easier access to these activities, there are many fake accounts deceiving the public using DBC activities. This way, the presence of the DBC system is used as an evaluation for public concerns regarding many cases of fraud and problems that have arisen.¹⁷In 2016, online media published news where there were conflicts between funders and ones collecting donations who were suspected of misusing the donations. In addition, there is also an issue where donations are spent not according to the initial purpose of fundraising.¹⁸One of the examples is the case involving Cak Budi, who was accused of using donations to enrich himself by using the donations for personal uses.¹⁹

In fact, scams on social media are common. There are many social media scams disguising themselves as new startups, by showing brief identity and branding to convince funders to make contributions, but they actually only try to deceive social media users. In addition, in terms of regulation, there are also many practical problems due to unclear regulations that specifically regulate DBC. This is evident from the fact that conflict resolution related to donations still refers to regulations containing similar cases. In fact, the conflict resolution provisions seem to use general regulations only. However, regulations concerning equity and debt crowdfunding have already been issued.²⁰

In fact, the unclear regulations related to DBC have automatically lead to insufficient legal protections for the implementation of these activities. This way, this study could focus on the unclear legal aspects. In addition, the results of this study can serve as a consideration, reference and comparison for the government in issuing DBC-related regulations. In fact, the public has not had sufficient understanding of DBC, so it is necessary to conduct socialization regarding how this crowdfunding system works. This should also take into account the condition of the Indonesian people and the effects of crowdfunding activities on the Indonesian economy which is inseparable from the practice of mutual cooperation.

¹⁶Lambert, T. & A. Schwiendbacher, *An Empirical Analysis of Crowdfunding*. Social Science Research Network, 1578175, 2010. p. 213.

¹⁷www.femina.co.id , Hati-hati, modus Penipuan berkedok Donasi, accessed on September 14, 2020.

¹⁸*Ibid*

¹⁹Tempo.co., pengakuan Cak budi pakai uang donasi, accessed on September 14, 2020.

²⁰Intan Nirmala sari, OJK Keluarkan Aturan Crowdfunding, Kontan.co.id

B. Problem Formulation

With the abovementioned phenomena, the writer was interested in discussing the legal protections of Donation-Based Crowdfunding service providers in Indonesia. This includes: *first*, what is the philosophical meaning of Donation-Based Crowdfunding activity? *Second*, what are the legal protections for the service providers of Donation-Based Crowdfunding activities in Indonesia? This study aimed to determine the legal protection for Donation-Based Crowdfunding service providers in Indonesia. This study is expected to enrich insights and serve as a consideration for future researchers.

C. Methodology

This study carried out a qualitative normative legal research method by using a statute approach and a conceptual approach. The object of this research focused on cases in which donation-based crowdfunding was implemented, hopefully capturing the reality comprehensively, both patently and more obscure.

D. Discussions and Results

1. Philosophical Meaning of Legal Protections For Dbc

a. Crowdfunding in General

Crowdfunding is a funding mechanism that is based on reciprocity, transparency and shared interests; it comes from the public.²¹ As a term, crowdfunding contains two English words, namely ‘crowd’ which means a large number of people, and ‘funding’ which means is providing money for a particular purpose. As a word, crowdfunding is defined as funding made by a group of people.²²

The main players in crowdfunding are individuals who fundraise, crowdfunding portals as intermediaries, and the community as funders. Crowdfunding processes start when individual fundraisers register on an online crowdfunding portal. After registering, the fundraiser submits a proposal to the crowdfunding portal. The crowdfunding portal then follows up by selecting all the submitted proposals. If accepted, the project will be displayed on the portal page and the individual fundraiser is called as a creator. Both the crowdfunding portal and creator then create campaign

²¹ Nia Utami Tirdananta, Vina Georgian, Yen Sun, *Evaluasi Goog Corporate Governance Atas Kebutuhan Donatur Pada Penerapan Crowdfunding Di Indonesia: Studi Kuantitatif Dan Kualitatif Pada Efekrumah kaca.Net, Patungan.Net, Dan Wujudkan.Com*.Tech Journal, Vol 5 of 2014, Bina Nusantara University Jl. K.H. Syahdan No 9, Kemanggisan, Palmerah, West Jakarta 11480, p. 124.

²² Jhon M. Echols & Hasan Shadily, *Kamus Lengkap Bahasa Inggris-Indonesia & Indonesia- Inggris*, (Bogor : Gramedia, 2008), p. 78.

and conduct dissemination through social media. Any interested public can participate by becoming a funder by sending money via bank transfer to an account of which the account holder is the crowdfunding portal.²³

In fact, the donations raised using the crowdfunding system in Indonesia is channeled only via bank transfer method. If the target donations are collected, the donations will be transferred by the crowdfunding portal to the project creator; if the target donations fail to be collected, the donations will be returned to the funders, but they will first be given an option to transfer the funds to another project displayed on the crowdfunding portal page.

In terms of the definition in general, crowdfunding is no different from traditional fundraising (or simply known as fundraising). The Indonesian language has long had the term '*urunan*' (to chip in) to describe the process of raising small amounts of money from many people. In fact, what is new about crowdfunding is not the concept of collecting money, but its ability to utilize the capabilities of Web 2.0 technology and social networking, especially in relation to the viral networking and marketing functions, empowering the mobilization of large numbers of users from a specific web community in a relatively short period of time. In principle, anyone who is connected via the internet can access crowdfunding web sites and raise funds for projects or social activities.²⁴

In fact, fundraising by chipping in (*urunan*) is usually carried out on a small scale, in a limited community where fundraisers generally know each other or are under the same institutions (for example: one office, one place of worship, etc.). In terms of the process, *urunan* fundraising model is usually done traditionally, for example, using a bag or envelope and managed by a person in charge.

Crowdfunding is a web 2.0-based phenomenon. The presence of the crowdfunding sites has become a catalyst for the development of the crowdfunding industry in the world and in Indonesia, including *Wujudkan.com*, *Patungan.com*, *Ayopeduli.com*, *GandengTangan.com* and *Kitabisa.com* which have facilitated many non-profit projects such as performing arts, education, culture and health. A key success factor for crowdfunding is the digitization of society using the Internet.

²³www.Kitabisa.com Bagaimana Cara Menggalang dana di Kitabisa?, accessed on September 10, 2020.

²⁴ Calic, G. & E. Mosakowski, *Kicking Off Social Entrepreneurship: How A Sustainability Orientation Influences Crowdfunding Success*. Journal of Management Studies, Vol. 53 No. 5, 2016, p. 738.

Currently, the market is increasingly fond of using digital facilities and accounts in carrying out their activities. People can communicate, access and provide information of social projects or campaigns constantly.²⁵

The crowdfunding platforms that are commonly found in Indonesia are mostly in the form of reward-based crowdfunding and donation-based crowdfunding. This is evident from the fact that funders will earn rewards in the form of services and goods from the donation fundraising that they participate in. The crowdfunding platforms in Indonesia which are known to always be most active and raise the highest transactions are online. Anyone, from individuals, communities, foundations to organizations can create a campaign for various categories such as health, education, construction of places of worship, natural disasters etc. This is also in accordance with the psychographics of the Indonesian people who are friendly, communal, collective and fond of mutual cooperation as a social capital in achieving prosperity.²⁶

b. Crowdfunding Regulation

DBC is implemented to gather voluntary financial contributions. This is a benchmark in the implementation of this type of crowdfunding. A problem commonly encountered in its implementation is related to conflict resolution when there is purported fraud or abuse of DBC activities. In fact, the implementation of fundraising, channeling, allocation, and supervision of the donations cannot run well due to the absence of a specific regulation concerning DBC.

However, regulations that closely touch this matter have been issued, including: Financial services authority regulations Number 37 2018 Concerning Crowdfunding Services through Information Technology-Based Stock Offerings (Equity Crowdfunding), Law Number 25 of 2007 concerning Investment, Law Number 8 of 1995 concerning Capital Market, Law Number 24 of 2007 concerning Disaster Management, Article 60 Paragraph (1) concerning Financing, stating that disaster management financing is the responsibility of the central government and regional government.

²⁵Budi Susilo, Pemasaran Digital: Segmentasi Demografi Pengguna Media sosial di kota Pontianak, *Jurnal Eksplora Informatika*, Vol 8, no 1, 2018, p. 163.

²⁶Tadjuddin Noer Effendi., Budaya Gotong Royong Masyarakat Dalam Perubahan Sosial Saat Ini., *Jurnal Pemikiran Sosiologi*, Vol. 2 no.1, 2013, p. 2.

In addition, Paragraph (2) of the same article mentions that the government encourages public participation in the provision of community-sourced funds.²⁷ However, it does not contain any specific provisions concerning public participation or efforts in fundraising or financing. Since 2017, the Financial Services Authority has planned to issue a regulation which specifically regulates crowdfunding, but it has not been issued until now. This means that law is not a mere written regulation and law enforcement officers which the public has known so far, but it also covers things that have actually occurred in the community.²⁸

The implementation of crowdfunding is normatively in line with the spirit of economic development as stated in Article 33 of the 1945 State Constitution of the Republic of Indonesia. One important thing to pay attention to is its implementation. Crowdfunding has successfully collaborated the concept of mutual cooperation with the use of technological advances and has made it possible for people to meet other people whom they have never met face to face to contribute to each other on the basis of trust.²⁹ A weakness of this system is related to its legal certainty and protection of funds that have been paid by the public, in the form of either donations or investments.

Similarly, the fact that there has not been any legal certainty for the donation-based crowdfunding system has caused multiple interpretations and misunderstandings in its implementation, so it is necessary to design a comprehensive mapping of the characteristics of the crowdfunding system, starting from the formulation of legal actions, legal relations, mechanisms, legal basis, authorized parties, to patterns of proper conflict resolution to anticipate any possible problems.³⁰ In fact, its implementation has not been accompanied by supervision from the government, creating obstacles and problems in terms of the implementation procedures and targets that are not in accordance with the initial design of the crowdfunding activities. It seems very easy to manipulate data as well as commit fraud.

c. Crowdfunding in Creating Community Welfare

Crowdfunding activities can be realized when the activities successfully raise the targeted amount of funds from the public. Therefore, it is necessary for the managers or

²⁷Law Number 24 of 2007 concerning Disaster Mitigation.

²⁸Suriyanto, *Hukum Membentuk Masyarakat*, (Bandung: Permata, 2005), p. 23.

²⁹Aprilia Ika, 'OJK Segera Keluarkan Aturan "Crowdfunding" Juli' (*Kompas.com*, May 4, 2017).

³⁰Cita Yustisia Serfiani, *Karakteristik Sistem Crowdfunding Sebagai Alternatif Pendanaan Industri Kreatif* (Universitas Airlangga press, 2018) p. 7.

creators of crowdfunding projects to consider some factors that motivate people to be willing to make financial contributions, allowing for a higher success rate of the projects displayed on a crowdfunding portal. An innovative crowdfunding project, in terms of concept, product, and marketing, is a factor that attracts funders to participate.³¹ When there are many funders making financial contributions, it is easier for the community to use these funds for social needs.

Along with the development of technology and internet, donation-based crowdfunding has become a means of utilizing CSR. The form of CSR available in utilizing the crowdfunding feature is philanthropy. Philanthropy can be defined as the manifestation of compassion for fellow human beings in the form of donations of money, goods, or other works for those in need or for other social purposes. The technique employed to attract greater support from the public is to use a company as a power to raise donations. This technique is different from traditional philanthropic CSR.

In practice, there have already been many sites that carry out their activities using the crowdfunding services. The operations of most of these sites are in the form of donations. The development of crowdfunding in Indonesia is expected to be able to stimulate the economic growth of the community. Crowdfunding concept is in fact inspired from the concepts of micro finance³² and crowdsourcing³³, but the crowdfunding concept has a distinct characteristic which makes it different from the other two concepts. The distinction of the crowdfunding concept is the fact that crowdfunding is fundraising facilitated by the internet³⁴. According to Hollis and Sweetman, crowdfunding in many cases is not a new idea. This can be traced back in 1700s through the concept of micro finance³⁵. Over time, the concept was captured as an opportunity and one of the programs proposed by the government, namely 1000-Start-Up National Movement. “This movement aims to make Indonesia as The Digital Energy of Asia in 2020. This program is held as a digital technology-based problem

³¹Iwayan Bagus Pramana, Peranan OJK dalam Mengawasi Lembaga Keuangan Non Bank berbasis Fintech jenis Peer to Peer Lending, Makalah disampaikan dalam seminar OJK, Udayana University, Bali. 2018.

³²Morduch, J. ‘The Microfinance Promise. *Journal of Economic Literature*, (1999) EL, 1569–1614.

³³Poetz, M.K.M.S. ‘The value of crowdsourcing: Can users really compete with professionals in generating new product ideas ‘ (2012) PIM, 245–256.

³⁴Mollick, ‘The Dynamics of *Crowdfunding*: an Exploratory Study’ (2014), BV 16.

³⁵Hobbs, J., Grigore, G., & Molesworth, M, ‘Success in the management of *crowdfunding* projects in the creative industries’ (*Internet Research*, 2016), 146–166.

solving.” However, community’s lack of understanding about crowdfunding has caused low participation of the Indonesian community in crowdfunding, leading to a slow development of crowdfunding in Indonesia. In fact, people in Indonesia have higher dependence on conventional financial banking system. Crowdfunding is less attractive due to lack of understanding;³⁶ lack of understanding has made crowdfunding less popular even though people residing in other countries have long carried out DBC activities. Several countries in Europe, Asia, and America have done a lot of donation-based crowdfunding activities.³⁷

Supervision in this case is about authority; in this context one of which is supervisory authority. The term ‘authority’ often equates to the term ‘*bevoegheid*’ in Dutch legal terms.³⁸ There is also authority (*rechtsbevoegheden*). Authority is the scope of public legal action and the scope of government authority. Authority is distributed by laws in order for it to have legal consequences.

In the field of public law, authority is obtained by a person through two ways, by attribution or by delegation of power. Attribution is defined as authority which is attached to the position held. In addition to attribution, authority can also be obtained through the delegation of power in the form of either delegation or mandate. In law, authority also means rights and obligations (*rechten en plichten*)³⁹.

Donation-based crowdfunding system is not a financial investment which promises returns in the form of financial benefits. Therefore, this type of crowdfunding is not under the scope of supervision from financial services regulation in various countries that implement the two crowdfunding systems. The United States and a number of countries in Europe such as Italy, Spain, Germany and England, do not place this system under the supervisory authority of financial services regulation in their respective countries.⁴⁰

In Indonesia, activities of raising donations are subject to both a statute and regulation, namely Law Number 9 of 1961 and Government Regulation Number 29 of

³⁶ Mollick, E. *The dynamics of Crowdfunding: An Exploratory Study*. Journal of Business Venturing, 2015, Vol. 29, No. 1.

³⁷ Quero M.J. & R. Ventura. *Co creación de valor. Un estudio de casos de crowdfunding*. Universia Business Review, 2016, Vol. 21, No. 3.

³⁸ *Ibid.*, 7.

³⁹ Ridwan HR., *Hukum Administrasi Negara* (Edisi Revisi), 2007, Jakarta: PT Raja Grafindo Persada, 99.

⁴⁰ Tanja Aschenbeck Florange, dkk., Regulation of Crowdfunding in Germany, the UK, Spain, and Italy and the Impact of the European Single Market, (*European Crowdfunding Network AISBL*, 2013) 19.

1980. Government Regulation Number 29 of 1980 regulates internal and external supervision to improve the performance and accountability of community organizations. Internal supervision is carried out within the community organizations in accordance with the organizational mechanisms regulated in the memorandum and article of association (AD/ART). External supervision as referred to in paragraph (1) shall be carried out by the community, central government and/or regional governments. Internal supervisors serve to enforce the organization's code of ethics and decide on sanctions within the organizations. On the other hand, the external supervision by the community is in the form of complaints submitted to the central government or regional governments.

In supervising the implementation of donations or fundraising which can be accounted for properly in accordance with the provisions of the applicable laws and regulations, the supervisory measures to be taken include both preventive and repressive measures. Such preventive and repressive supervision is mandated by Article 2 Paragraph (1) of Law No. 9 of 1961 which states that "permit granting is intended primarily to maintain the safety and tranquility of the people, either through preventive or repressive measures, against those who intend to do bad things."⁴¹

d. Supervision of Donation-Based Crowdfunding Systems

Preventive supervision is set forth in Article 19 of Government Regulation No. 29/1980, which mentions that "the permit-granting officials are obliged to carry out supervision measures according to their authority." This means that managers of donation-based crowdfunding and reward-based crowdfunding sites, including those in the form of a legal entity or foundation, should apply for permission to collect donations to the Ministry of Social Affairs of the Republic of Indonesia because the collection of donations covers all regions in Indonesia. This can be seen in Article 20 Paragraph (1) of Government Regulation Number 29 of 1980 which further states that "The employees working under the Ministry of Social Affairs who have been appointed by the Minister as social security units carry out supervision tasks for the implementation of donation collection."

1. Suppressive supervision is carried out by the Police in coordination with the Ministry of Social Affairs. Investigations on donation embezzlement are submitted to the Police, particularly to the cybercrime unit, because the donations are collected

⁴¹Article 2 Paragraph (1) Law Number 9 of 1961 concerning Collection of Money and Goods.

online. If the Director General of Social Protection and Security is aware of an act committed by a party collecting donations which, in accordance with Law Number 9 of 1961, is a punishable crime, he must immediately report it to the Investigating Officer determined based on the criminal procedure. Article 8 Paragraph (1) Letters a and b of Law Number 9 of 1961 states that the actions related to collecting donations that are punishable are:⁴² Organizing, recommending or helping organize a collection of money or goods without prior permission; and

2. Not complying with the conditions and orders stated in the permit-granting decision. In an era when everything is online, all transactions including donations can be made via the internet network. In the past, we had to go directly to a fundraising organization to make a donation, but now donations can be made anywhere and anytime in the form of online donations. However, online donations still have to offer security, receive supervision and have clear arrangements because they are prone to abuse. Campaigners or creators who request donations on the DBC website can be an individual or on behalf of an organization which channels donations.

2. Legal Protections For Dbc Service Providers In Indonesia

a. Definition of Legal Protections

A simple definition of legal protections is to ensure legal certainty. This is an effort to protect citizens, and prevent their rights as citizens from being violated and those who violate the rights will be subject to sanctions in accordance with the applicable regulations.⁴³ Legal protections are also an attempt by the government to protect someone's interests, by allocating a power to him/her; this is one of the characteristics and purposes of law itself, i.e. to protect the community. This is manifested in the form of legal certainty, so the community can enjoy the rights that are given as stated in the applicable regulations.⁴⁴

Legal protections and law enforcement in a country are a necessity in order to create peace and order in that country.⁴⁵ Legal protections protect human rights that are violated by others and such protections are given to the community to allow for them to enjoy all the rights provided by the law. Every citizen needs legal protections.

⁴²Article 8 Paragraph (1) Letters a and b Law Number 9 of 1961 concerning Collection of Money and Goods.

⁴³*Ibid.*, p. 73.

⁴⁴Satjipto Rahardjo, *Ilmu Hukum*. (Bandung: Citra Aditya Bakti, 2012) p. 70.

⁴⁵*Ibid.*, p. 74.

Legal protections can be defined as an effort carried out by every person or by governmental or private institutions for security, control and fulfillment of the welfare of the community, in order to enjoy the same rights. Legal protections are inseparable from the actual functions of the law, to protect the interests and welfare of humans. This means that law is not a mere written regulation and law enforcement officials which the public has known so far, but it also covers things that have actually lived in the community.⁴⁶

Law provides protections for people to fulfill almost all kinds of interests in life. Legal protections are defined as the government's efforts to guarantee legal certainty in order to protect its citizens so their rights are not violated, and those who violate the rights of others will be subject to sanctions in accordance with the applicable regulations. Legal protections have the following elements:⁴⁷

- a. There is protections from the government for the community or its citizens;
- b. There is legal certainty from the government;
- c. In relation to the rights of citizens; and
- d. There are sanctions for those who violate them.

Legal protections are one of the most essential elements of a country which upholds a legal system. It is considered important because the establishment of a country is followed by the establishment of laws which regulate each citizen.⁴⁸In fact, legal protections are one of the rights of every citizen. On the other hand, legal protections are an obligation of the country, meaning that the government of the country is obliged to provide legal protections to its citizens. In other words, it can be said that legal protections are a separate description of the functions of the law, of which the concept is that law provides justice, order, certainty, benefit, and peace.⁴⁹

Satjipto Raharjo elaborated and defined: "Legal protections are to provide protections to human rights that have been harmed by others and this protections are given to the community so they can enjoy all the rights that are provided by the law".⁵⁰ CST Kansil defined "Legal protections are a variety of legal measures that must be

⁴⁶Suriyanto, *Hukum Membentuk Masyarakat*, (Bandung: Permata, 2005), p. 23.

⁴⁷ Andi Hamzah, *Perlindungan dan Penegakan Hukum*, <https://Perlindunganhukum.org> Accessed on September Accessed on, 2019.

⁴⁸*Ibid.*

⁴⁹ Bobby Briando, *Prophetic Law :Membangun Hukum Berkeadilan Dengan Kedamaian, Legislation Journal Indonesia*, Vol. 14, No. 03. September 2017.

⁵⁰Satjipto, Rahardjo, *Op.Cit.*, 53.

provided by law enforcement officers to provide security, both physically and mentally, from interference and various threats from any party”.⁵¹

Philipus M. Hadjon explained "Legal protections are a collection of regulations or rules that will protect one thing from other things, meaning that the law provides protections for the rights of customers from something that may result in the failure to fulfill these rights".⁵²In addition, Muktie A. Fadjar added that “Legal protections is a narrowing of the meaning of protections, in this case it is only protections by law.”⁵³Protections provided by the law is also related to the presence of rights and obligations, in this case those owned by humans as legal subjects in relation to their interactions with fellow humans and the environment. As legal subjects, humans have the right and obligation to take legal action.⁵⁴

Therefore, the law serves to protect human interests; the law must run professionally, ensuring an act is carried out in a certain way according to the applicable laws and regulations, in order to fulfill the rights in the form of providing security which is manifested in the form of restitution, compensation, medical services and legal assistance.⁵⁵

The principle of legal protections in Indonesia are based on Pancasila as the state ideology and philosophy which is based on the concept of "rule of the law "where legal protections in Indonesia emphasizes the principle of protecting human dignity which is derived from Pancasila.⁵⁶Meanwhile, the principle of legal protections against the government actions are based on and derived from the concept of recognition and protections of human rights, a concept which was born from the western history, directed towards limiting and determining the obligations of society and government.⁵⁷

Legal protections can be defined as an effort consciously carried out by every person or by governmental or private institutions for security, control and fulfillment of the welfare of the community, according to the existing rights. Such definition is inseparable from the actual functions of the law, primarily to protect the interests of humans. In other words, law provides protections to people by fulfilling various human

40. ⁵¹ C.S.T Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1989) p.

⁵² Philipus M. Hadjon, *Perlindungan Bagi Rakyat Indonesia*, (Surabaya : Bina Ilmu, 1987) 25.

⁵³ Muktie A. Fadjar, *Perlindungan dan Penyempitan Arti Perlindungan*, (Bandung. Cipta, 1988) 8.

⁵⁴ *Ibid.* 10.

⁵⁵ Soerdjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1984) 133.

⁵⁶ Philipus M. Hadjon, *Op. Cit.*, 34.

⁵⁷ *Ibid.*, 38.

interests, under a condition where humans must also protect the interests of other humans.⁵⁸

Everyone basically has the rights to protections by the law. Therefore, there are various categories legal protections. Of the many types and kinds of legal protections, some of them are quite popular, including:⁵⁹

- a. Legal protections for consumers. Legal protections for consumers has been regulated in Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protections, which regulates all aspects that are the rights and obligations between producers and consumers.
- b. Legal protections given to the Intellectual Property Rights (HAKI). Regulations concerning intellectual property rights include copyright and industrial property rights. The regulations concerning intellectual property rights are stated in several laws and regulations, including Law of the Republic of Indonesia Number 19 of 2002 concerning Copyright, Law of the Republic of Indonesia Number 15 of 2001 concerning Trademarks, Law of the Republic of Indonesia Number 14 of 2001 concerning Patents, Law of the Republic of Indonesia Number 29 of 2000 concerning Plant Variety Protections, etc.
- c. Legal protections for suspects are provided in relation to the rights of the suspects which must be upheld to comply with the examination procedure as stipulated in laws and regulations.
- d. Legal protections for parties who violate fintech activities.

Laws can effectively run and carry out their functions to protect human interests if enforced. In other words, legal protections can be realized if law enforcement is carried out. Law enforcement process is one of the efforts to position laws as a guideline for every action taken by both the community and law enforcement officials or institutions. In other words, law enforcement is an effort to implement legal provisions in various aspects of life.⁶⁰

Legal protections and law enforcement are particularly important because these things can help achieve the following things:⁶¹

- a. Upholding law supremacy
Law supremacy is when laws have absolute power in regulating human interactions in various kinds of life. In other words, all the actions carried out by citizens and government are always based on applicable laws. Law supremacy cannot be upheld if the applicable regulations are not properly enforced by the community or law enforcement officers.

⁵⁸Faturrahman, <https://perlindunganhukumsertapenegakanhukum.org> Accessed on January 5 2020.

⁵⁹*Ibid.*, 3

⁶⁰Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*, (Jakarta: Refika Aditama, 2014), p. 20.

⁶¹*Ibid.*, p. 35.

- b. Upholding justice
The main objective of law is to bring justice to every citizen. The fact that all citizens can enjoy their rights and fulfill their obligations is a form of justice. This can be realized if laws are enforced.
- c. Creating peace in the lives of community
A peaceful life is the dream of everyone. Peace will be realized when everyone feels protected in all aspects of life. This can only be achieved if the applicable laws are enforced.

The success of legal protections and law enforcement is not solely related to the enforcement of applicable laws, but as stated by Soerjono Soekanto, the factors that affect law enforcement are also dependent on a number of factors, including:⁶²

- a. The law, statutes shall not conflict with the state ideology, and the laws that are made shall contain provisions which regulate the authority to make laws as stipulated in the state constitution, and the laws that are made shall be in accordance with the necessity and conditions of the community in which the laws are applicable.
- b. Law enforcement officers, including any parties directly involved in law enforcement. Law enforcement officers must carry out their duties properly according to their respective functions as regulated in laws. In carrying out these functions, they should prioritize justice and professionalism, so they could become a role model for the community and trusted by all parties including the community.
- c. Community, meaning the community who live in an environment where the laws are applicable. This means that the community must know, understand, and obey the applicable laws, as well as have full awareness of the importance and necessity of laws for the life of the community.
- d. Facilities that support law enforcement, which include educated and skilled human resources, good organizations, adequate equipment, adequate funding, etc. The availability of adequate facilities is necessary for the success of law enforcement.
- e. Culture, which is a result of work, creation and feeling based on human initiatives in social life. In this case, culture comprises the underlying values of applicable laws, which values are the abstract conceptions of what is considered good to be adopted and what is considered bad to be avoided.

To achieve justice, the law provides legal protections to the public, based on "the electric law library's lexicon the government affords to the citizens".⁶³ Meanwhile, Philipus M. Hadjon stated that legal protections are a protections of dignity as well as recognition of human rights which belong to legal subjects in a constitutional state

⁶²Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, (Jakarta : Rajagrafindo Persada, 2019) The 16-th edition, p. 21.

⁶³Tabroni Perdana, *Perlindungan Hukum dalam Sistem Pemerintahan dan Masyarakat*, (Jakarta: Muda Persada, 2018), p. 43.

based on legal provisions, from arbitrariness.⁶⁴ Further, there are two types of legal protections for citizens, namely:⁶⁵

- a. Preventive legal protections, wherein people are given the opportunity to raise objections (*inspraak*) or express their opinions before a government decision is final and conclusive. This legal protections aim to prevent disputes.
- b. Repressive legal protections aim to resolve disputes, by means of general courts.

Legal protections of human rights is the responsibility and duty of the government towards its citizens. This statement can be based on the natural rights theory developed by a number of figures, such as Thomas Aquinas, John Locke, Thomas Paine and Jean Jacques Rousseau.⁶⁶ The basic idea of the natural rights theory is that the position of every human being in life is determined and subject to the authority of God, and this theory in principle believes that every individual is entitled to inherent natural rights that cannot be disturbed.⁶⁷

E. Conclusion

The concept of Donation-Based Crowdfunding, one type of crowdfunding in Indonesia, has not been fully understood by the Indonesian community. In fact, there are varied understandings, interpretations, as well as perceptions, so it takes time to uniform the perceptions and understandings related to the implementation of DBC. In addition, legal protections for the implementation of donation-based crowdfunding has not been given because there have not been any legal arrangements related to DBC. Therefore, it is necessary to carry out several measures, including conducting socialization related to the implementation of various types of DBC to the public; raising public awareness of the benefits of crowdfunding, as well as strengthening the regulatory systems by the authorized governmental institutions in order to improve government supervision of DBC activities to prevent any mis-uses by irresponsible parties.

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⁶⁴Philipus Harjon, *Perlindungan Hukum bagi Rakyat Indonesia*, (Surabaya: Peradaban, 2017), p. 1-3.

⁶⁵Philipus Harjon, *Ibid*, p. 4.

⁶⁶HernawanSastrawinata, *Penegakan Hukum dalamKonsep Negara Kesatuan*. (Medan: Bersinar Book, 2017), p. 32.

⁶⁷*Ibid*, p. 6.

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